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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,430	01/28/2004	Brian L. Gibson	H0003690	3601

7590 08/11/2006

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EXAMINER
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CHEUNG, WILLIAM K

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 08/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/766,430

Applicant(s)

GIBSON ET AL.

Examiner

William K. Cheung

Art Unit

1713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18, 67 and 71-85 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18, 67, 71-85 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Request for Continued Examination***

1. The request filed on July 24, 2006 for a Request for Continued Examination (RCE) under 37 CFR 1.53(d) based on parent Application No. 10/766,430 is acceptable and a RCE has been established. An action on the RCE follows.
2. Claims 1-18, 67, 71-85 are pending.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-18, 67 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaneko et al. (US 3,635,856) as affirmed by product literature of Mitsubishi-Kagaku Food Corporation, copyright 2002 (c) obtained from website <http://www.mfc.co.jp/english/index.htm>, for the reasons adequately set forth from paragraph 3 of the office action of January 18, 2006.

5. Claims 71-75 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaneko et al. (US 3,635,856) as affirmed by product literature of Mitsubishi-Kagaku Food Corporation, copyright 2002 (c) obtained from website <http://www.mfc.co.jp/english/index.htm> for the reasons adequately set forth from paragraph 4 of the office action of January 18, 2006.

6. Claims 76-85 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaneko et al. (US 3,635,856) as affirmed by product literature of Mitsubishi-Kagaku Food Corporation, copyright 2002 (c) obtained from website <http://www.mfc.co.jp/english/index.htm> for the reasons adequately set forth from paragraph 5 of the office action of January 18, 2006.

### ***Response to Arguments***

7. Applicant's arguments filed June 22, 2006 and July 31, 2006 have been fully considered but they are not persuasive. Applicants argue that Kaneko et al. and the product literature of Mitsubishi-Kagaku Food Corporation, individually and in combination, do not disclose an octo-ester. However, the examiner disagrees because the reference to Kaneko et al. (col. 5, line 26) by itself is sufficient to anticipate the invention of claims 1-18, 67, 71-85. Kaneko et al. clearly teach the incorporation of sucrose alkyl esters. Since Kaneko et al. are silent on "a mixture" of sucrose alkyl esters

Art Unit: 1713

or "a partially esterified" sucrose ester, the examiner has a reasonable basis to interpret the recited "sucrose alkyl esters" to mean a sucrose alkyl ester that has been fully esterified (100 wt% octa-substituted). The use of the product literature of Mitsubishi-Kagaku Food Corporation is merely to affirm the backbone structure of the claimed "sucrose structure" of the Formula I of claim 1. In view of the reasons set forth above, the rejection of claims 1-18, 67, 71-85 set forth in the final rejection of January 18, 2006 is proper.

Regarding the affidavits filed June 22, 2006, the affidavits filed June 22, 2006 are not signed.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William K. Cheung whose telephone number is (571) 272-1097. The examiner can normally be reached on Monday-Friday 9:00AM to 2:00PM; 4:00PM to 8:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David WU can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1713

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William K. Cheung, Ph.D.

Primary Examiner

August 4, 2006

**WILLIAM K. CHEUNG  
PRIMARY EXAMINER**